

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence Brenner, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station
Unit 1)

Docket No. 50-322-0L

July 27, 1982

PREHEARING CONFERENCE ORDER
(Phase I -- Emergency Planning)

Pursuant to 10 CFR § 2.752(c), this order recites the actions taken at the July 20, 1982 prehearing conference held to discuss proposed contentions with respect to LILCO's Emergency Plan, and certain other matters.

Emergency Planning Contentions

As a result of its discussions with the parties with respect to the intervenors' "First Amended Consolidated Emergency Planning Contentions" dated July 6, 1982, the Board perceives a need for greater guidance on the scope of those matters which we contemplate litigating during the initial phase of these emergency planning proceedings. What we intend to proceed with at present are those emergency planning matters which are

currently capable of final resolution. The Board deemed it logical at the time of our April 14, 1982 prehearing conference to proceed with matters based on the LILCO plan, dealing primarily but not exclusively with onsite matters, rather than waiting for final submission of Suffolk County's radiological emergency plan before doing anything, as intervenors urged us to do at that time.^{1/}

We were therefore somewhat surprised to hear counsel for Suffolk County assert at the July 20, 1982 prehearing conference that the County now stands ready to "litigate everything," rather than waiting until the County's emergency planning efforts are finalized before litigating such offsite issues as evacuation time estimates. It remains this Board's intention to proceed during this first phase of litigation with those matters which are currently capable of final resolution. We have little desire to litigate any subject matter in this proceeding twice. Tr. 7389. This rule of thumb has aided us in our determinations below of whether consideration of a particular issue is appropriate at the present time.

^{1/} LILCO has not at this time applied for a low-power license pursuant to recent amendments to the Commission's emergency planning regulations. See 47 Fed. Reg. 30232 (July 13, 1982). The Board acknowledges that had we earlier determined not to litigate those emergency planning matters capable of final resolution until Suffolk County's emergency planning efforts are finalized, our inaction would have effectively precluded LILCO from making such an application. We do not believe, however, that it would be fruitful at the present time to discuss whether or not the resolution of those matters which are now before us would support the legal requirements for a low-power license. Should LILCO some day choose to make such an application, the parties would then be permitted to address this issue.

There was some discussion at the prehearing conference which the Board believes confused the distinction between the party which has the burden of pleading and the party which has the burden of proof in an NRC licensing proceeding. Tr. 7246-7252. In general, an intervenor bears the burden of pleading contentions with reasonable bases and specificity. See 10 CFR 2.714. Pursuant to 10 CFR § 2.732 and 10 CFR Part 2, App. A, § V(d)(1), the applicant or the proponent of an order has the burden of proof, unless otherwise ordered by the presiding officer. What this means is that when an intervenor has met its burden of pleading a litigable contention, the applicant then has the burden of presenting sufficient proof to refute the intervenor's contention to the satisfaction of the Board.

In the present context, the intervenors have the burden of setting forth in their contentions the specific inadequacies which they believe to be present in LILCO's plan. For this reason, the Board is requiring in its following rulings that certain of intervenors' contentions be further specified in a revised consolidated filing to be formally received by the Board and parties by August 20, 1982. Tr. 7278. It is expected, however, that draft copies of intervenors' revised contentions will be provided to all parties on an informal basis some days prior to this time so as to aid them in preparing their responses, which are due by August 24, 1982. Tr. 7278. The consolidated filing shall contain all contentions being advanced for litigation in Phase I, numbered consecutively.

The Board requests that intervenors incorporate into each subsection of each contention to be included in their August 20, 1982 filing, including those contentions which we are admitting by this order, references to those specific provisions of the LILCO plan which are alleged to be inadequate, as well as specific references to the NRC regulations or requirements which it is alleged the plan fails to meet. If no plan provision or specific NRC requirement exists with regard to a particular contention, a statement to that effect will suffice. We know of at least one NRC proceeding where intervenors provided this information in response to a request for further specification of their proposed emergency planning contentions, and we understand it was useful to the Board and parties. As it is assumed that the intervenors consulted the regulations and LILCO's plan in drafting their contentions originally, the Board does not anticipate that this requirement will be overly burdensome. However, that in furtherance of the request we made at the prehearing conference that LILCO assist the intervenors in familiarizing themselves with those changes contained in its recent revision of its emergency plan (Tr. 7220), LILCO should informally assist the intervenors in identifying relevant provisions of the revised plan.

In the rulings on contentions which follow, we have placed each proposed contention into one of five categories: (1) admissible; (2) not admissible; (3) not admissible during this phase of the emergency planning litigation; (4) not admissible as currently written; and (5) susceptible to settlement.

In placing a contention into category number three, we do not mean to imply that the Board has reached any conclusion with regards to its admissibility during the contemplated "Phase II" of the emergency planning litigation focusing on the offsite plans. All that is meant is that the Board believes the subject matter of the proposed contention is more appropriate for consideration during this later phase.

A contention placed into category number four indicates that while the Board believes the subject matter of the contention to be appropriately addressed to this first phase of emergency planning litigation, it is not set forth with sufficient specificity and bases to give adequate notice of what the intervenors seek to litigate.

Matters deemed "susceptible to settlement" are those proposed contentions which the Board believes should be subject to speedy resolution based upon the exchange of certain readily ascertainable information and/or negotiation among the parties. These contentions are neither being admitted nor denied admission at this time; they are being held in abeyance based upon the Board's belief that the results of informal negotiation on these matters would be preferable to their formal consideration by us. We have indicated which contentions in this category should be settled as part of Phase I, and which ones can be settled on a more extended schedule.

EP1: Overall LILCO Plan Inadequacy (Tr. 7232-7255)

Not admissible.

Both LILCO and the Staff objected to this contention as being overly broad and lacking adequate particularization. The Staff further objected

on the ground that subdivisions (4) and (5) involve issues which should be more appropriately considered with the County plan.

We agree that this contention lacks particularization and is overly broad. The "local conditions" referenced in subdivisions (1) through (4) are so vaguely defined as to fail to apprise the Board or parties of what matters intervenors seek to put into issue. For example, those matters set forth in subdivision (3) of this contention, "Local topographical and geographical characteristics", are among those subjects which 10 CFR § 50.47 recites as bases for determining the boundaries for the 10-mile plume exposure pathway EPZ. The proposed contention does not state, however, whether it is the EPZ size or some other matter, such as the effect of the topographical or geographical characteristics of Long Island on evacuation routes or traffic flow, which intervenors seek to litigate.

Nor is any specificity provided by the intervenors' references to 10 CFR § 50.47, 10 CFR Part 50, App. E, or NUREG-0654, since unlike certain other contentions raised by the intervenors (see, for example, the citations to specific sections of these items in EP3B), this contention does no more than broadly state that the standards in these authorities have not been met.

Furthermore, while we do believe subdivision (5) of this contention to be more particularized than subdivisions (1)-(4), we also believe it to be clearly redundant to contention EP5(D)(1), which we have held to be inadmissible during this phase. Tr. 7343.

Therefore, contention EP1 is wholly denied admission.

EP2: Prompt Notification System (Tr. 7255-7256, 7281-7309)

A) Siren coverage constricted by bad weather.

Admitted.

B) Backup power for system

Admitted.

C) Signs in recreational areas

Susceptible to settlement.

The Board believes it to be possible for the parties to either settle or substantially narrow this contention, Tr. 7286, along the lines of the oral comments of counsel for Suffolk County. Tr. 7283. This includes the portion of this contention which addresses the language of the signs. Tr. 7282-7283.

The Board does not contemplate litigation of this issue during Phase I, if at all. Tr. 7289.

D) Gaps in siren coverage

Admitted.

E) Notification of large facilities by tone alert

Susceptible to settlement.

- The parties are requested to conduct whatever investigation and informal exchanges of information as are necessary for them to narrow or resolve this matter as part of Phase I. Tr. 7295-7296.

F) Verification of tone alert system operability

Susceptible to settlement as part of Phase I, in accordance with the on-the-record comments of counsel for Suffolk County that this issue may be moot. Tr. 7302.

G) Ten-mile zone coverage

Not admissible during this phase of the emergency planning proceedings. Tr. 7303.

H) Notification of deaf or hearing impaired

Not admissible during this phase. Tr. 7304.

EP3: Medical and Public Health Support (Tr. 7309-7338)

A) Failure to provide for adequate medical services

The Board believes at least portions of this subpart to be subject to considerable specification, narrowing and factual resolution as part of Phase I. Tr. 7312. We therefore find it not admissible as currently written.

We further believe that intervenors should consider whether portions of this contention continue to be viable in light of the Appeal Board's July 16, 1982 decision in Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), 16 NRC ___, ALAB-680 (slip op. at 13-22). Tr. 7309-7310.

B) Transportation of contaminated individuals - traffic congestion

Admitted. Tr. 7335.

The Board retains the power to rule that this contention should more properly be heard during Phase II of this proceeding. Tr. 7352-7353.

Additionally, the Board has required intervenors to consider consolidation of this contention with EP6B and EP9D, which we are ordering be consolidated by August 20.

C) Lack of up-to-date agreements for emergency medical services
Susceptible to settlement.

Whether there are or are not up-to-date agreements as to medical services is a readily ascertainable fact which we believe the parties should stipulate or negotiate as part of Phase I, but not litigate. Tr. 7338. It should be consolidated for settlement with other similar contentions regarding agreements with support organizations. Tr. 7345.

EP4: Federal Resources (Tr. 7339-7341)

Not admissible as currently written.

Even though no party objected to this contention, the Board required that intervenors file a better particularized version by August 20. Tr. 7340-7341. If LILCO's plan is silent as to the use of Federal Resources, that too should be noted. Tr. 7340. We also believe this contention to be readily susceptible to settlement.

EP5: Protective Actions (Tr. 7341-7343)

A) Reliability and accuracy of LILCO protective action
recommendations.

Admitted. Tr. 7341.

B) Evacuation time estimates

Not admissible during this phase. Tr. 7343.

C) Persons with particularized needs not addressed

Not admissible during this phase. Tr. 7343.

D) Sheltering as protective action at general emergency

Not admissible during this phase. Tr. 7343.

EP6: Offsite Response Organizations (Tr. 7343-7347)

A) No analysis whether volunteers will report

Admitted.

Consolidate with EP9C. Tr. 7345.

B) Ability to respond to Shoreham site during evacuation

Admitted.

Consolidate with EP9D and consider consolidation with EP3B.

C) Up-to-date contracts with offsite response organizations

Susceptible to settlement as part of Phase I.

The existence of such contracts is a readily ascertainable fact which we believe the parties may resolve informally. Tr. 7345.

Consolidate with EP3C. Tr. 7345.

EP7: Training (Tr. 7347-7348)

Susceptible to settlement as part of Phase I.

Particularize, based on references in the recent revision to the LILCO plan, any matters which remain in issue. Tr. 7348.

EP8: Public Education (Tr. 7348-7352)

Not admissible during this phase. In addition, Phase II contentions similar to this one should be susceptible to settlement and/or stipulation of the facts.

EP9: Onsite Response Organization and Augmentation (Tr. 7352-7353)

- A) Distinction between Emergency Director and Response Manager
unclear

Admitted.

- B) Ability to augment staff in 30 minutes

Admitted.

- C) Personal commitments of response personnel

Admitted.

Consolidate with EP6A. Tr. 7345, 7352.

- D) Ability to augment staff--traffic congestion

Admitted.

Consolidate with EP6B and consider consolidation with EP3B.

EP10: Public Information (Tr. 7353-7354)

Susceptible to settlement as part of Phase I, and subject to the clarification that the contention relates to coordination of messages between LILCO and Suffolk County. Tr. 7353.

EP11: Communications/telephones (Tr. 7354-7356)

Not admissible as written.

Consolidate with EP20 series as much as practicable, particularly EP20(a)(1) and (5). Tr. 7354.

As consolidated, this contention should focus on LILCO's communications with the first line of authorities, not to the general public, and on the forms of backup communications available. Tr. 7356.

EP12: Emergency Response Facility (Tr. 7357)

Admitted.

EP13: Notification of Response Organizations and Emergency Personnel

(Tr. 7357-7359)

Not admissible as written; at least partially susceptible to settlement as part of Phase I.

The Board believes this proposed contention to be severable into two subject matters: LILCO's notification of off-site response organizations relative to its classification of various emergency action levels and the content of LILCO's initial and follow-up messages to those off-site authorities. Tr. 7357-7358. We believe that both aspects of this contention should be susceptible to resolution. Tr. 7358.

The Board believes that portions of this contention which the parties are unable to settle, if any, may be proper for consolidation with other contentions, e.g., EP10. Tr. 7358. Appropriately revised or consolidated contentions should be included in intervenors' August 20, 1982 submission. The portion of this contention relating to the content of messages is particularly susceptible to settlement.

EP14: Public Messages (Tr. 7359-7360)

Susceptible to settlement as part of Phase I.

EP15: Off-site Planning Coordination with State of Connecticut

(Tr. 7360-7361)

Not admissible during this phase.

EP16: Radiological Exposure to Emergency Workers

Admitted.

Should include references to LILCO's plan in the August 20 filing, Tr. 7361, as noted above with respect to all contentions.

EP17: Exercises (Tr. 7362-7370)

The Board has determined to make no judgment as to the admissibility of this contention at present.

The parties are requested to brief the legal question of what kind of exercises are required by NRC regulations at what frequencies, taking into account both the language of these regulations, as recently amended by the Commission, 47 Fed. Reg. 30232 (July 13, 1982), as well as the Statement of Considerations published in conjunction with the Commission's emergency planning rules as originally promulgated, 45 Fed. Reg. 55408 (August 19, 1980). These briefings should be filed on behalf of intervenors on August 20, 1982 with any responses from Staff and LILCO being due on August 24, 1982. As is the case for intervenors' revised contentions, the Staff and LILCO should be provided with copies of intervenors' draft position on this legal issue a few days in advance of its August 20, 1982 filing so as to allow them adequate time to respond.

Should the parties reach a meeting of the minds prior to August 20, which moots the need to decide the legal questions in the context of this case, no briefing of this question will be necessary; in such a case, the parties should advise us by that date whether any factual contention remains. If so, a reworded contention shall be included in the August 20 filing. Tr. 7367, 7369.

EP18: Emergency Classification System (Tr. 7370)

Not admissible as currently written.

Intervenors should revise and clarify by August 20th what portions of this contention remain in issue, if any, following LILCO's revision of its emergency plan.

EP19: Accident Assessment and Monitoring (Tr. 7371)

Not admissible as currently written.

Intervenors are to determine whether any portions of this contention may be dropped in light of LILCO's recent revision to its emergency plan. Furthermore, this contention should be further specified so as to include specific references to relevant portions of LILCO's plan. Tr. 7371.

EP20: NSC Contentions (Tr. 7371-7383)

As we stated at the prehearing conference, the Board believes that many of the contentions in the EP20 series advanced by the North Shore Coalition (NSC) should be consolidated both with other subsections in the same series, as well as with certain contentions appearing elsewhere in intervenors' consolidated filing by August 20, 1982. We wish to reemphasize that we appreciate intervenors past and continuing efforts to coordinate and consolidate emergency planning contentions. We do believe however, that it would be preferable for intervenors to further meld their contentions in those areas of overlap noted in this order and/or discussed at the prehearing conference, rather than having the Board itself attempt to pull together those portions of various contentions which it believes to overlap, once the time for hearings is actually upon us. We also believe that a simplification of intervenors' numbering system would be useful.

EP 20(a): Notification Procedures Inadequate

Not admissible as currently written.

EP20(a) should be consolidated internally for purposes of simplicity. This is not to say that the Board sees an identity between the issues that each subpart raises, but that it sees a substantial overlap, such that the present breakdown of its subparts may be more narrow than is necessary. EP20(a)(1), for example, lacks particularity as written. If the other subparts of EP20(a) are intended to specify EP20(a)(1), however, the contention would possibly, as combined, provide the needed specificity. Specific references to both LILCO's plan and appropriate NRC references should be provided, as is being required for other contentions.

Consolidation with EP11 should be achievable. Tr. 7354.

Greater particularity should be provided with respect to EP 20(a)(7) so as to define what is meant by "hotline." Tr. 7379.

Consideration should be given to separating EP20(a)(8) and EP20(a)(9) from the other subparts of EP20(a) and creating one or two redrafted additional contentions. Tr. 7380.

EP20(b): Communications Between LILCO and County, State and Response Organizations

Not admissible as currently written.

Consolidation along the lines discussed above with respect to EP20(a) should be attempted. EP20(b)(1) lacks particularity, perhaps for the same reasons discussed as to EP20(a)(1).

EP20(b)(6) and (7) lack particularity. Consideration should be given to whether these contentions should be consolidated with others or whether they should more appropriately be stated as separate contentions. Tr. 8381.

EP20(c): Assistance Resources Needed Onsite

Not admissible as written/susceptible to settlement as part of Phase I.

Consolidate with EP3 and EP6 on points of overlap to form comprehensive contentions. Tr. 7381-7383.

EP20(c)(5) and EP20(c)(7) are matters susceptible to settlement as part of Phase I, and should be consolidated for settlement with pertinent portions of EP3, EP6 and EP13.

EP21: Recovery and Re-entry (Tr. 7383-7385)

Not admissible as currently written/susceptible to settlement. This contention, advanced by SOC, should be clarified by August 20, 1982 as to those aspects of LILCO's plan which allegedly do not comply with NUREG-0654, Item IIIM or 10 CFR § 50.47(b)(13). The Board also believes, in reflection, that this contention should be susceptible to settlement as part of Phase I.

EP22: Interim Safety Parameter Display System (SPDS) (Tr. 7385-7386)

Not admissible as written.

The subdivisions of this contention, particularly (f), should be better particularized by August 20 as to what specific matters intervenors seek to litigate.

Furthermore, in providing specific references to the portions of LILCO's plan and NRC requirements which are in issue, intervenors should key these references into each subdivision of this contention to which they are alleged to relate.

EP23: Permanent SPDS (Tr. 7386-7388)

Not admissible as written.

This contention should be better particularized by August 20, 1982, incorporating any new information which may be included in the documents which LILCO has recently provided. Tr. 7387. If it is alleged that insufficient information is available at present to further particularize this contention, this too should be stated.

EP24: Emergency Operating Procedures (Tr. 7387-7388)

Not admissible as written.

This contention should be better particularized by August 20, or dropped, if all necessary EIPs have now been provided.

EP25: Accident Assessment Equipment (Tr. 7388-7389)

Not admissible as written.

The Board deems this proposed contention to lack adequate particularization. Specifics should be provided by August 20.

EP26: Human Factors (Tr. 7389)

Not admissible as written.

As the Board believes "human factors" to be too vague a matter to be litigated without greater specificity, intervenors are required to particularize this contention by August 20.

EP27: PRA/Consequence Analysis (Tr. 7389-7403)

Admitted as reworded.

In its July 12, 1982 response to the objections by other parties with respect to intervenors' July 6, 1982 "First Amended Consolidated Emergency Planning Contentions," Suffolk County proposed a revision to EP27 which somewhat shifted the focus of this contention.

While the original version of this contention asserted that LILCO was required to do a PRA/consequence analysis to provide a basis for its accident assessment and dose assessment models, the revised version of EP27 apparently conceded that a PRA was not required by NRC regulations. (See Suffolk County's July 12, 1982 Response, at 18, which acknowledges that "a PRA/consequence analysis per se may not be required (by NRC regulations).") Suffolk County's revised EP27 appears to instead assert that LILCO has commenced, but not completed, a PRA/consequence analysis designed to provide the basis for its accident assessment and dose assessment models. It further asserts that "as the results of this PRA/consequence analysis are not reflected in the LILCO plan, and there is no evidence of other means, if any, used by LILCO to assure the accuracy of the assessment models," there is no assurance that LILCO has met NRC requirements.

At the prehearing conference held July 20, 1982, LILCO stated that while it believed it to be possible to use its PRA as a confirmatory check on its accident assessment and dose assessment models, its models had not been developed using its PRA. Tr. 7391. Intervenors were of the opinion, however, that if LILCO intends to use its PRA to "improve" its

assessment models, then it should be a proper subject for litigation. Tr. 7392, 7394.

The Board stated, at Tr. 7402-7403, that it was considering rewording intervenors' contention to reflect the discussion at the prehearing conference, and invited the parties to comment further in writing, if they so desired, on this effort.

On July 22, 1982, LILCO served upon the Board "LILCO's suggested Revision of Contention EP27 on Emergency Planning," in which LILCO (1) asserted that it does not plan to rely upon its PRA as evidence that its emergency plan meets NRC requirements, (2) reserved the right to use its PRA as rebuttal evidence, and (3) set forth a proposed revision to EP27 based on the wording of 10 C.F.R. § 50.47(b)(9). Subsequently, on July 23, 1982, the Board received a supplement to the previous day's filing, clarifying one sentence, as requested by Judge Morris. Tr. 7898.

On July 26, 1982, the Board received copies of "Suffolk County's Response to LILCO's Suggested Revision of Contention EP27 on Emergency Planning," as well as a letter from Suffolk County Counsel Christopher M. McMurray dated July 23, 1982, which had been intended to be a precursor to the July 26, 1982 response. In those documents, Suffolk County asserts: (1) that EP27, as revised in its July 12, 1982 response, is admissible; (2) that if LILCO uses its PRA for any purpose, Suffolk County should be permitted to inquire into its adequacy and reliability; and (3) that if the Board chooses to adopt LILCO's version of EP27, it should be amended to more closely track the language of 10 C.F.R. § 50.47(b)(9). Suffolk County also set forth in the form of a proposed

contention specific ways in which LILCO's accident assessment and dose assessment models may be deficient, as had been suggested by LILCO.

Cutting through all the arguments, both verbal and written, which this Board has heard on EP27, it appears clear that NRC requirements do not mandate that a PRA/consequence analysis be completed by LILCO as the basis for its accident assessment and dose assessment models. It also appears clear that LILCO does not plan to rely on its PRA as evidence that its accident assessment and dose assessment models meet NRC requirements. We therefore do not see the need to litigate LILCO's PRA in these circumstances, unless LILCO attempts to rely upon its PRA in either its direct or rebuttal testimony on this contention.

We do not believe that this conclusion prejudices intervenors' rights in any way. As was noted above, Suffolk County has conceded that a PRA per se is not required by NRC regulations. Furthermore, the intervenors' July 12, 1982 revision of EP27 asserts not only that the "results of the PRA/consequence analysis are not reflected in the LILCO plan," but also that "there is no evidence of other means, if any, used by LILCO to ensure the accuracy of the assessment models." Therefore, if LILCO can make its case using only evidence of "other means" used to ensure the accuracy of its assessment models, we see no reason to litigate LILCO's PRA in this context, unless LILCO attempts to rely on it.

For the above reasons, EP27 is reworded as follows:

EP 27: Accident Assessment and Dose Assessment Models (SC,
joined by SOC and NSC)

LILCO's plan fails to provide reasonable assurance that adequate methods, systems and equipment for assessing and monitoring actual or potential off-site consequences of a radiological emergency condition are in use, and therefore does not comply with 10 C.F.R. § 50.47(b)(9).

The Board has removed intervenors' reference to 10 C.F.R. § 50.47(b)(10) from this contention as we believe this to be adequately covered (and referenced) in contention EP5.

Reservations of Rights to File Contentions

Intervenors' joint filing additionally reserved the right to submit contentions regarding iodine monitoring, Tr. 7226, and the technical support center, Tr. 7229. Counsel indicated at the July 20, 1982 prehearing conference that they expected LILCO's production of its information relative to iodine monitoring to be imminent. Tr. 7227. Therefore, barring any unforeseen circumstances, the Board anticipates that intervenors will include any proposed iodine monitoring contentions in their August 20 filing.

The Board further expects intervenors to include in that filing any proposed contentions which it may have with respect to the technical support center, unless they are able to convince us at that time of any valid reason that they should be permitted to await the actual completion of this structure prior to their filing of contentions. Tr. 7231. We look no more favorably on an assertion such as this than we would a reservation of rights to file contentions regarding a particular aspect of the plant after it is constructed. Unless intervenors can inform us on August 20 of their specific concerns, in the form of a contention, we see no reason to allow a reservation of rights such as this.

Timing of Litigation of Contentions

As noted above, the Board only wishes to try those matters which appear subject to final resolution. The Board may therefore choose to defer to Phase II the hearing of certain aspects of any of the above matters if, upon review of the prefiled testimony, we believe later hearing to be more appropriate.

Revised Deposition Schedule - Emergency Planning Phase I

In light of LILCO's approximately three-week delay in providing the Board and parties with copies of Revision 2 of its Onsite Emergency Plan and the Staff's apparently last-minute unilateral decision to delay its onsite appraisal of LILCO's emergency preparedness, the Board granted Suffolk County's request that adjustments be made in the schedule for depositions with respect to the initial phase of emergency planning contentions. Tr. 7274. This confirms those rulings.

By July 30, 1982, Suffolk County is to identify to LILCO those witnesses which it seeks to depose with respect to LILCO's onsite emergency planning efforts. Tr. 7257. By the same date, LILCO should identify to the County any additional witnesses which it seeks to depose, based upon any new information which it has obtained since its original deposition list was provided to the County. Depositions are to commence on Thursday, August 5, 1982, Tr. 7258, and must be completed by no later than Friday, August 27, 1982. Tr. 7277. The parties are to coordinate the scheduling of their deposition such that only one deposition is proceeding at any given time, although more than one deposition may be scheduled per day, if time allows. Tr. 7273.

Although the Board recognizes that these depositions may be used by the parties in drafting their testimony for Phase I of the emergency planning litigation, the September 14, 1982 deadline for filing this testimony is unchanged by this adjustment in the deposition schedule. Some slight extension of time might be considered in the future, however, depending upon the timing of the Staff's report of its appraisal of LILCO's onsite emergency preparedness. Tr. 7278.

LILCO's Motion to Compel Discovery on Emergency Planning

By a motion dated July 9, 1982, LILCO moved this Board for an order compelling Suffolk County to produce those documents which it had sought through its June 2, 1982 "First Request to Suffolk County For Production of Emergency Planning Documents." In its July 19, 1982 response, Suffolk County opposed LILCO's motion, asserting that those documents sought by LILCO's request which had not already been produced were outside the scope of the pending proceedings, as such scope had been determined by this Board, and that the production of such documents at this time would be unduly burdensome.

While the Board acknowledged that its earlier discovery rulings might be subject to several interpretations in light of its decision to bifurcate the hearing of emergency planning matters, the Board clarified that its intent was that discovery commence with respect to all existing emergency planning documents, whether they relate to LILCO's or Suffolk County's planning efforts. Tr. 7404-7405. While we did not intend to open up other formal forms of discovery, such as depositions, interrogatories and requests for admissions with respect to those matters

to be litigated during the second phase of the emergency planning hearings, it was our intent that discovery continue with respect to those methods set forth in 10 CFR § 2.741 (production of documents and things and entry upon land for inspection and other purposes), so that a lengthy period of discovery will not be required prior to the litigation of those matters. Tr. 7404. The parties are, of course, encouraged to continue whatever informal exchanges of information as might be mutually agreeable with respect to all phases of emergency planning litigation so as to aid in better focusing and speedily resolving such matters. Tr. 7257, 7405.

With respect to our ruling that all existing emergency documents might be discoverable, we further clarified that our ruling was intended to encompass not only those documents and things in the immediate possession and control of the parties, but also those in the hands of the parties' witnesses, agents, consultants, contractors or subcontractors (Tr. 7409). This includes those documents and things which might lead to the discovery of admissible evidence, such as Suffolk County's non-nuclear emergency planning materials (Tr. 7410-7411). See 10 CFR § 2.740(b)(1).

In light of efforts made by all parties, particularly LILCO, with respect to previous voluminous discovery requests, the Board does not believe that a request for documents should be deemed objectionable solely because there might be some burden attendant to its production. Everything which can be reasonably made available should be promptly produced, with the parties making every effort to accommodate any logistical and geographical concerns which may arise. Tr. 7410-7413.

Suffolk County shall produce those documents requested by LILCO which are in its direct custody and control by July 26, 1982. Those requested documents in the possession of consultants, witnesses, etc., should be produced by August 3, 1982. Tr. 7416-7417. The County is expected to make good faith efforts to produce such documents in a timely fashion and should promptly communicate to LILCO any difficulties which might arise in meeting this schedule such that a mutually agreeable resolution might be reached.

Security Contention Settlement Schedule

As the parties were previously advised, this Board is considering requesting that another tribunal be appointed to litigate Suffolk County's contentions as to the LILCO Security Plan. At the behest of the parties, we delayed taking such action after being informed that the parties believed that these issues could be either significantly narrowed or totally settled.

The parties have been requested to provide the Board with a written status report by the morning of Tuesday, August 3, 1982 as to what progress has been made in this regard. This status report is to either be submitted jointly by Suffolk County, LILCO and the Staff, or by each party separately with the benefit of consultation, and shall state the party's prognosis for settlement of these matters. Should the parties desire to indicate at that point which issues still remain in dispute, the status report may contain such information, and should be appropriately handled as safeguards information. Tr. 7418-7419.

The Board will discuss this status report with Counsel for the cognizant parties at an appropriate time during the week of August 3, 1982 and attempt to then resolve whether the appointment of a second presiding officer is necessary or desirable, on the basis of the parties' progress to that point.

Should the parties indicate that settlement or a substantial narrowing of the security issues is imminent, the Board will entertain a request at that time that we retain jurisdiction over these issues for an additional two-week period. The parties will then be requested to deliver a second status report to the Board's Bethesda offices by the morning of Tuesday, August 17, 1982, setting forth in detail any unresolved issues which remain. This report may also be submitted either by the parties jointly, or separately with the benefit of consultation, and will serve as the basis for the Board's final determination whether to seek the appointment of a second tribunal. Tr. 7419.

Objections

Pursuant to 10 CFR § 2.752, objections to this order may be filed with the Board by a party within five days of service of the order, except that the NRC Staff may file objections within ten days of service.

THE ATOMIC SAFETY AND
LICENSING BOARD

Lawrence Brenner, Chairman
Lawrence Brenner
ADMINISTRATIVE JUDGE

Peter A. Morris, Member
Dr. Peter A. Morris
ADMINISTRATIVE JUDGE

James H. Carpenter, Member
Dr. James H. Carpenter
ADMINISTRATIVE JUDGE

Bethesda, Maryland
July 27, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence Brenner, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322-OL
(Emergency Planning)

October 4, 1982

APPENDIX B TO SEPTEMBER 7, 1982
SUPPLEMENTAL PREHEARING CONFERENCE ORDER
(PHASE I -- EMERGENCY PLANNING)

ADMITTED PHASE ONE CONTENTIONS

The contentions listed below are those admitted by the Board's September 7, 1982 Supplemental Prehearing Conference Order which will be heard during Phase I of its hearings on emergency planning matters. Other than numbering these admitted contentions consecutively and making certain other changes in accordance with the Board's rulings in its September 7 order, the Board has not altered the wording or punctuation of these contentions from that which appeared in intervenors' August 20, 1982 "Phase One Consolidated Emergency Planning Contentions."

EP1: PROMPT NOTIFICATION SYSTEM
(SC, joined by NSC and SOC)

LILCO intends that individuals situated within a 10-mile radius of the plant will be alerted to a radiological emergency through 89 sirens and approximately 150 tone alert receivers (Plan at 6-11 through 6-12; Wyle Laboratories Report WR 82-10 at 4-3). LILCO's system, known as the "Prompt Notification System," is inadequate to effectively notify the population which may be affected by a radiological emergency and thus fails to meet the requirements of 10 CFR §§50.47(b)(5) and (6), 10 CFR Part 50, Appendix E, Item D.2 and NUREG 0654, Items II.E and F for the following reasons:

- A. LILCO has failed to demonstrate that the siren coverage will not be constricted significantly during weather conditions such as rain, snow and fog, which have a tendency to muffle sound, as well as during high winds and thunderstorms which may adversely affect the ability to hear the siren.

- B. LILCO has not adequately demonstrated that in the event of a loss of power to all or part of the system, it could provide backup power in time to offer timely warning to the population.

C. LILCO's prompt notification system does not provide complete siren coverage of all of the population within the EPZ as shown by the gaps evident on the map appended to the Wyle Report. LILCO has not adequately provided for notification of individuals who may be within the areas not covered by sirens.

EP2: MEDICAL AND PUBLIC HEALTH SUPPORT
(SC, joined by NSC and SOC)

- A. Suffolk County contends that LILCO, by designating Central Suffolk Hospital as the primary medical facility to treat contaminated injured individuals (Plan at 0-16), and further by designating University Hospital in Philadelphia, Pennsylvania for backup medical treatment (Plan at 6-16), has failed to provide adequate medical services for contaminated injured individuals as required by 10 CFR §50.47(b)(12), 10 CFR Part 50, Appendix E, Items IV.E.5 through 7, and NUREG 0654, Items K and L for the following reasons:
- (1) Central Suffolk Hospital may itself become subject to radiological exposure and/or evacuation given its location approximately nine miles from the Shoreham site (Plan at 6-16).

(2) University Hospital is too distant to provide timely treatment of contaminated injured individuals.

B. Furthermore, LILCO has failed to adequately demonstrate that ground transportation (Plan at 6-16) is adequate for conveyance of contaminated injured individuals to Central Suffolk Hospital under the congested traffic or radiological conditions that are likely to exist during a radiological emergency. Thus, LILCO has failed to satisfy 10 CFR §50.47(b)(12), 10 CFR Part 50, Appendix E, Item IV.E.6, and NUREG 0654, Item II.L.4.

EP3: FEDERAL RESOURCES
(SC, joined by NSC and SOC)

The LILCO plan (Plan at 5-8) fails to provide for incorporation of Federal response capabilities into the plan. The plan states that "although no federal assistance is expected" other than that to be provided for in the Suffolk County plan and other non-LILCO plans, the LILCO "Response Manager has the authority to request any and all Federal assistance considered appropriate for the given situation" (Plan at 5-8; see also 5-10). The plan makes no mention of specific Federal resources expected to arrive at the facility and their estimated time of arrival, nor does it identify specific utility and local resources available to support the Federal response. In failing to do so, Suffolk County contends, LILCO has not satisfied the requirements of 10 CFR

§§50.47 (b)(1), (2) and (3), 10 CFR Part 50, Appendix E, Item IV.A.7, and NUREG 0654, Items I.1, II.A.2 and 3, and II.C.1.

EP4: PROTECTIVE ACTIONS
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO has not met the requirements of 10 CFR §50.47(b)(10), 10 CFR Part 50, Appendix E, Item B, or NUREG 0654, Item II.J with respect to development and implementation of a range of protective actions for emergency workers and the public within the plume exposure pathway EPZ and with respect to development of guidelines for the choices of such actions in that the LILCO plan and procedures do not adequately discuss the bases for the choice of recommended protective actions (i.e., the choice between various ranges of evacuation vs. sheltering vs. other options) for the plume exposure pathway EPZ during emergency conditions. Thus, LILCO does not have sufficient knowledge or information to provide reliable, accurate protective action recommendations.

EP5: OFFSITE RESPONSE ORGANIZATION AND
ONSITE RESPONSE AUGMENTATION
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO has failed to provide reasonable assurance that onsite assistance from offsite agencies will be forthcoming in the event of a radiological emergency at the Shoreham site (see, e.g., Plan at 5-8 and 6-15). LILCO has therefore not met the

requirements of 10 CFR §§50.47(b)(1), (2), (3), (8), (12) and (15), 10 CFR Part 50, Appendix E, Item A, and NUREG 0654. In addition, LILCO has not demonstrated adequately that it will be able to augment its onsite emergency response staff in a timely manner (see Plan, Ch. 5). LILCO has also, therefore, failed to meet the requirements of 10 CFR §50.47(b)(1) and (2). Thus:

- A. It does not appear that LILCO has addressed or analyzed the possibility that offsite personnel and/or onsite augmenting personnel expected to report to the Shoreham site for emergency duty, would fail to report (or report in a timely manner) because of conflicting family (or other) duties that would arise in the event of a radiological emergency.

- B. LILCO has not adequately demonstrated the possible effects of traffic congestion during evacuation of the population upon the ability of offsite personnel and/or onsite augmenting personnel to respond promptly to the Shoreham site.

- C. LILCO has not developed notification procedures for offsite response organizations and onsite personnel (both those onsite at the time of an emergency and those called to report for duty after an emergency

has commenced) in a manner consistent with the emergency classification and action level scheme set forth in NUREG 0654, Appendix 1. LILCO has, therefore, not ensured that sufficient trained personnel will be available when required.

EP6: TRAINING
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO has failed to meet the training requirements of 10 CFR §50.47(b)(11) and (15), 10 CFR Part 50, Appendix E, Item F, and NUREG 0654, Items II.K and O for all personnel who may be called upon to assist in an emergency in that LILCO has not provided adequate assurance (Plan at 5-8) that fire, ambulance, and other such personnel from offsite agencies in the vicinity of the Shoreham plant which are expected to respond for emergency duty have received adequate radiological emergency response training. Without such training, the County contends that an adequate response as required by §50.47(b) [cannot be assumed.]^{*/}

^{*/} Those words appearing in brackets above were not included in intervenors' August 20, 1982 "Phase One Consolidated Emergency Planning Contentions." This language appears in the version of this contention filed by intervenors on July 6, 1982, but were apparently inadvertently omitted from the August 20 filing. We therefore amend this contention to include these words.

EP7: ONSITE RESPONSE ORGANIZATION
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO has not satisfactorily delineated the responsibilities of LILCO response personnel, nor has it demonstrated adequately that it will be able to augment its emergency response staff in a timely manner. Thus, LILCO's emergency response plan is not in compliance with 10 CFR §50.47(b)(1)(2)(3) and (8), 10 CFR Part 50, Appendix E, Items A and C, and NUREG 0654, Items II.A, B, C and H for the following reasons:

- A. The LILCO plan at 5-4 through 5-8 does not clearly define and distinguish between the functions of the Emergency Director and the Response Manager;
- B. Table 5-1 does not clearly demonstrate LILCO's ability to augment its staff within 30 minutes of declaration of an emergency and is not in compliance with Table B-1 of NUREG 0654.

EP8: EMERGENCY OPERATIONS FACILITY
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO's plan and procedures for operation of its Emergency Operations Facility is not in conformance with the requirements of 10 CFR §50.47(b)(8), 10 CFR Part 50, Appendix E, Item IV.B.8, and NUREG 0654, Item II.H in that:

- A. The LILCO plan at 7-3 states that the EOF shall achieve operational readiness within two hours of declaration of an emergency. Such an activation time violates the one hour requirement of NUREG 0696.

- B. There is, as yet, no provision for obtaining at the EOF, or at any other LILCO emergency response facility, information relating to seismic phenomena (Plan at 7-9).

- C. LILCO proposes to activate its EOF only upon declaration of a Site Area or General Emergency (Plan at 7-2). The EOF should be activated at an earlier time in an accident to ensure operational readiness in the event that an accident escalates to a more severe classification level.

EP9: RADIOLOGICAL EXPOSURE
(SC, joined by NSC and SOC)

LILCO has failed (Plan at 6-12 through 6-16 and related EIPs) to demonstrate that it has established the means for controlling radiological exposures to emergency workers (both LILCO personnel and those from offsite agencies). Thus, it has not met the requirements of 10 CFR §§50.47(b)(11) and (15), 10 CFR Part 50, Appendix E, and NUREG 0654, Items II.K and O in that:

- A. The plan inadequately describes provisions for monitoring individuals evacuated from the site (Plan at 6-12).
- B. The plan does not describe action levels for determining the need for decontamination of emergency response personnel.
- C. The plan does not adequately delineate guidelines for emergency workers to follow to ensure that exposures received by such workers are not excessive.

EP10: ACCIDENT ASSESSMENT AND MONITORING
(SC, joined by NSC and SOC)

Suffolk County contends that LILCO's plan (see Chapter 6) is inadequate with respect to its ability to assess and mitigate accidents and monitor radiological releases from the Shoreham facility in the event of a radiological emergency. Thus, LILCO has failed to comply with 10 CFR §§50.47(b)(2), (4), (8), (9) and (10), 10 CFR Part 50, Appendix E and NUREG 0654, Items II.B, D, H, I and J in the following respects:

- A. LILCO's commitment to only three field monitoring teams (Plan at 6-8) is inadequate given the large area and population that will need to be covered in the event of

an accident. Furthermore, LILCO's failure to require deployment of monitoring teams prior to the site emergency stage, and the time necessary (60 minutes) for such deployment, are inadequate for timely monitoring of potential radiological releases.

- B. LILCO does not intend to use real time monitors at fixed locations that can be remotely interrogated.

- C. The equipment intended for use by LILCO to monitor plant effluent does not provide timely and accurate information as to the actual value of the quantity of iodine released to the environment in the case of a radiological accident. In the absence of such timely and accurate information, LILCO is unable to initiate an adequate response to the release of iodine to the environment in the case of such an accident.

EP11: COMMUNICATIONS WITH OFF-SITE RESPONSE ORGANIZATIONS
(NSC, joined by SOC, SC will participate as an interested
County pursuant to 10 CFR §2.715)

The Plan relies completely for communication with off-site national, state, and local response organizations upon telephone

communications (e.g. 7.2.1 through 7.2.8) and on a low powered UHF Radio Based Station with a VHF Radio Based Station (7.2.10).^{1/} It fails to meet the criteria of 10 CFR 50.47(b)(2)(5)(6), 10 CFR 50 Appendix E, IV Paras D(3) and E(9) and NUREG 0654, Appendix 3, Para C(1), in the following respects:

- A. Insofar as the Plan relies on telephone communications (7.2.1 through 7.2.8), it does not take into account the possibility of (1) a power outage, (2) sabotage and (3) overload. This omission is especially significant because the Plan describes the Hotline^{2/} as the "primary means for notification of the State and County of emergency conditions at Shoreham." (7.2.1; see also 5.4).

1/ In this connection NSC notes that the Plan refers to the Suffolk County Radiological Emergency Response Plan (e.g. 5.3, 7.2.4). In view of the County's oft stated position that no such plan is now in existence and that its plan will not be filed until October, NSC requests a reservation for additional contentions if the County's Plan, as filed, should so require.

2/ Hotline(s) are "dedicated phone lines, made operational upon pick-up of the receiver and selection of desired location..." (7.2.1).

- B. Assuming that the telephone communications depend upon overhead, outdoor lines (there is nothing to the contrary in the Plan), the telephone communication network is vulnerable to extreme weather conditions, especially to sleet and ice formations on its lines and poles.

- C. The Plan relies on commercial telephone lines as "the primary communication link" for hospitals, Coast Guard, and DOE (7.2.4). These lines will become overloaded in an emergency, thus preventing communication with these vital offsite organizations.

- D. The Plan does not describe the "redundant power supplies" (7.2) which purportedly insure communications with off-site facilities.^{3/} NSC understands a "power supply" to mean the source of the power to maintain the communications systems and not the different communication modes and systems.

- E. The personnel to whom beepers are issued have varying responsibilities to notify response organizations.

^{3/} The back-up power source relates only to intra- and on-site communication (7.2.7).

However, the beeper requires them only to call in to predetermined numbers (7.2.9), using commercial telephone lines.

- F. The Plan describes the National Alert Warning System (NAWAS) as the "primary back-up communications link between the Shoreham site and off-site officials." (7.2.3) It does not otherwise describe NAWAS and therefore it is impossible to determine if it can perform its assigned task. For example, there is no description of its load capacity, coverage, or technical configuration; nor does it name the "off-site officials" and their agencies who are linked to NAWAS.

EP12: PERSONNEL ASSIGNMENTS TO COMMUNICATION/NOTIFICATION
(NSC, joined by SOC. SC will participate as an interested County pursuant to CFR §2.715)

The Plan's assignment of personnel to communications and notification responsibility is inadequate, both in the number of personnel assigned and because it overburdens those assigned with too many tasks. It thus does not meet the standards of 10 CFR 50.47(b)(1) and (7), and 10 CFR Appendix E, IV Para D (1)(3) and (9), in the following respects:

- A. An insufficient number of personnel is assigned to the EOF to assure proper notification to off-site emergency support and response organizations (5.2.8, 5.5.1, 7.1.3)

EP13: Interim Safety Parameter Display System (SPDS)
(SC, joined by SUC and NSC)

Suffolk County contends that the interim SPDS that LILCO proposes to utilize until the installation of a permanent SPDS is deficient because it does not meet minimum requirements for such a system. Specifically, the interim SPDS does not:

- A. provide all required parameters [NUREG 0696 at 26];
- B. provide for data verification [NUREG 0696 at 24];
- C. provide trending capability [NUREG 0696 at 25-26];
- D. provide information to the TSC and EOF [NUREG 0696 at 25]; and
- E. provide the function of aiding the operator in the interpretation of transients and accidents, nor does

it provide this function during and following all events expected to occur during the life of the plant, including earthquakes [NUREG 0696 at 27].

Thus, the interim SPDS does not meet the requirements of 10 CFR §§50.47(b)(4), (8), and (9), 10 CFR Part 50, Appendix E, Items IV.E.2 and 8, 10 CFR Part 50, Appendix A, GDC 13, and NUREGs 0696, 0737 and 0654, Item I.

EP14: ACCIDENT ASSESSMENT AND DOSE ASSESSMENT MODELS
(SC, joined by SOC and NSC)

LILCO's plan fails to provide reasonable assurance that adequate methods, systems and equipment for assessing and monitoring actual or potential off-site consequences of a radiological emergency condition are in use, and therefore does not comply with 10 CFR §50.47(b)(9).

Bethesda, Maryland
October 4, 1982